



**SUPPLEMENTAL AGENDA
PURCELLVILLE TOWN COUNCIL REGULAR MEETING
JANUARY 24, 2017, 7:00 PM
TOWN HALL COUNCIL CHAMBERS**

1. ACTION ITEMS

- 12.a. Staff Report for Request for Rezoning and Comprehensive Plan Amendment – Patricia DiPalma-Kipfer*** (D. Galindo/S. Hankins) (pgs. 3-9) (Motions pgs. 8-9)

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STAFF REPORT
ACTION ITEM

Item # 12a

SUBJECT: Request for Rezoning and Comprehensive Plan Amendment –
Patricia DiPalma-Kipfer

DATE OF MEETING: January 24, 2017

STAFF CONTACT: Daniel Galindo, AICP – Senior Planner
Sally Hankins – Town Attorney

BACKGROUND:

Patricia DiPalma-Kipfer emailed a letter to Town Council on November 4, 2016 requesting that the Town initiate a comprehensive plan amendment and rezoning of her property at 38038 Colonial Highway. Ms. DiPalma-Kipfer also read the letter during public comments at the November 8th meeting of Town Council. Ms. DiPalma-Kipfer made a similar request during public comments at the November 17th Planning Commission meeting and emailed a written copy of her comments to the Planning Commission on November 18th.

In her original letter and comments to Town Council, Ms. DiPalma-Kipfer requested that Town Council “initiate an Amendment to the Comprehensive Plan changing my property zoning from ‘Transition X’ to a Dual Re-Zone of ‘Residential/Mixed Commercial.’” However, in her later comments to the Planning Commission, Ms. DiPalma-Kipfer requested “to have CPA11-01 included in the final content of the updated Comprehensive Plan” and the Commission’s “consideration, approval, and forwarding to the Town Council a recommendation for an amendment to change my zoning from Transition X to Dual Rezone of ‘Residential/Mixed Use Commercial.’” [CPA11-01 designated the planned land use of her property as “mixed use commercial.”]

Ms. DiPalma-Kipfer’s request was discussed at the December 13th Town Council meeting, at which meeting the draft minutes indicate the following occurred:

Council member Grim stated that [the staff report] needs clarification and there are a number of things missing from the package to include history of the property from when it was annexed into the Town, which was not

initiated by the property owner. Council member Grim talked about PUGAMP, and suggested further review be done of other properties to include the Browning property and the Chapman property along Hirst Road, and this item be reviewed again at the second meeting in January and to include a report that has all of the facts to be determined by staff and the Planning Commission.

Council member Ogelman stated he feels public input is needed on this item and would like to have all of the facts before making a decision.

Mayor Fraser stated that based on what is presented tonight that his position will always be to seek out proffers and the revenue to make it worthwhile for the citizens. Mayor Fraser added that he understands additional information is needed for Council to make a decision.

Council member Bledsoe asked for clarification in the staff report about the options provided.

Council member Grim requested that Council agree to move this item to January to have all the facts and to have the misinformation clarified as well as background information.

Council member Grim made a motion that agenda item 12d Request for Rezoning and Comprehensive Plan Amendment by Patricia DiPalma-Kipfer be moved to the January work session of 2017. The motion was seconded by Council member Bledsoe, and approved by a vote of Town Council.

On Friday, January 13, 2017, the Town Manager sent an email to Town Council asking what specific additional information Town Council wanted to see incorporated into the January 24, 2017 Staff Report, in order to make its decision, but received no response. The Town Manager then told the Mayor that he would place this item on the January 24, 2017 Town Council agenda for the purpose of getting additional guidance from Town Council.

On January 19, 2017, Town Staff met with Councilmember Kelli Grim and Ms. DiPalma-Kipfer to discuss her request and work toward a greater understanding of her desires and the issues involved. It is Staff's understanding from this meeting that Ms. DiPalma-Kipfer would like the following:

1. That Town Council adopt a Resolution that affirms and makes legally sufficient the motion adopted by Town Council on June 14, 2011, which motion was to: *“approve amending the Purcellville Comprehensive Plan Land Use Map to designate Patricia A. DiPalma-Kipfer’s property located at 38038 West Colonial Highway ‘Mixed Commercial.’ ”* There was a concern raised by Ms. DiPalma-Kipfer that Town Council’s adopted motion on June 14, 2011, was legally insufficient because a Resolution was required.
2. That the Town incorporate Ms. DiPalma-Kipfer’s property into the updated Comprehensive Plan’s planned land use map as “Mixed Commercial,” since it was so designated by Town Council on June 14, 2011.
3. That the Town initiate and process a “zoning map amendment” application, which would remap her property from the existing “Transition X” zoning district, to a zoning district that allows for commercial development.
4. That Town Staff gather and study past “zoning map amendments,” believing that such past amendments will demonstrate that Town policy or custom allows for Town-initiated and processed zoning map amendments that benefit only a single private property owner, under circumstances similar to hers. It was specifically requested that Staff study past zoning map amendments for the Chapman property on Hirst Road, and the Browning property on 9th Street and Main.
5. That the Town extend water and sewer lines to Ms. DiPalma-Kipfer’s property.

ISSUES:

1. *“Ms. DiPalma-Kipfer requested a Resolution be adopted by Town Council to make legally sufficient the motion adopted by Town Council on June 14, 2011, which designated the planned land use for her property as Mixed Commercial.”*

Since Staff’s meeting with Ms. DiPalma-Kipfer, the Town Attorney has reviewed whether the motion adopted by Town Council at its June 14, 2011 meeting, to amend the Town’s Comprehensive Plan to designate the planned land use of Ms. DiPalma-Kipfer’s property as “Mixed Commercial,” was sufficient to effectuate an amendment to the Town’s Comprehensive Plan. Her opinion is that such vote did effectuate an amendment to the Town’s Comprehensive Plan, and that no Resolution is needed to complete the amendment. However, the Town Attorney has no objection to Town

Council's adoption of an Amendment that confirms the vote taken on June 14, 2011, and its effect. Since the Resolution would only be reaffirming a previous decision, no public hearings would be required. Staff could prepare such Resolution for Council's consideration at the February 14th meeting.

2. *"That the Town incorporate Ms. DiPalma-Kipfer's property into the updated Comprehensive Plan's planned land use map as "Mixed Commercial," since it was so designated by Town Council on June 14, 2011."*

Staff agrees that the existing "Mixed Commercial" planned land use designation applicable to Ms. DiPalma-Kipfer's property should be reflected on the current Planned Land Use Map. Further, the "Mixed Commercial" designation should also be reflected in any update to the Town's Comprehensive Planned Land Use Map, provided that the Town intends to maintain that designation. Any changes or revisions to the Planned Land Use Map that are made in concert with the ongoing review of the Comprehensive Plan would ultimately supersede currently approved designation.

3. *"That the Town initiate and process a "zoning map amendment" application, which would remap her property from the existing "Transition X" zoning district, to a zoning district that allows for commercial development."*

Staff maintains that it is not the Town's policy or practice to initiate and process a zoning map amendment that would benefit only a single private property owner. If the Town were to do so, it would forego the application fee and proffers normally associated with processing a zoning application, and, if approved, would increase the property value of Ms. DiPalma-Kipfer at no risk or expense to the benefitted property owner.

Ms. DiPalma-Kipfer believes, however, that further research by Town Staff will demonstrate that such zoning ordinance map amendments have, in fact, been undertaken by the Town and would serve as precedent for doing so in this case.

It is the Town Attorney's opinion that such precedence, even if it did exist, would not require the Town to undertake a zoning map amendment benefitting only a single privately owned parcel. For the Town to undertake such a zoning map amendment would first require that the Town Council find that such expenditure of public resources was for the public welfare and benefit.

4. *“That Town Staff gather and study past “zoning map amendments,” believing that such past amendments will demonstrate that Town policy or custom allows for Town-initiated and processed zoning map amendments that benefit only a single private property owner, under circumstances similar to hers. It was specifically requested that Staff study past zoning map amendments for the Chapman property on Hirst Road, and the Browning property on 9th Street and Main.”*

Staff will perform this work if asked to do so by Town Council, and report its findings at a subsequent Town Council meeting.

5. *“That the Town extend water and sewer lines to Ms. DiPalma-Kipfer’s property.”*

Staff informed Ms. DiPalma-Kipfer that Town policy requires each property owner to extend water and sewer lines to its own property. This is further buttressed by decades of history, demonstrating that any property owner wishing to connect to the Town’s public utility systems must extend the water and sewer lines at its own cost. Typically, with an Annexation Agreement, the Town will have negotiated and included a Water and Sewer Agreement. This Agreement would indicate that the property owner is required to extend the utility lines at their cost. The annexation to bring in the DiPalma-Kipfer, Catoctin Corner, Brown, and other properties was a Town-initiated annexation and did not include a Water and Sewer Agreement for those properties. Nonetheless, the Town’s requirement that utility lines be extended by the property owner was further confirmed as Catoctin Corner paid for the extension of water and sewer at their cost.

BUDGET IMPACT:

1. There would be no significant budget impact for Staff to prepare a Resolution confirming approval of CPA11-01, which established a planned land use designation of “Mixed Commercial” on the property owned by Ms. DiPalma-Kipfer.
2. There would be no significant budget impact to ensure that Ms. DiPalma-Kipfer’s property is depicted as “Mixed Commercial” in the Town’s updated Comprehensive Planned Land Use Map, which is currently under review by the Planning Commission, provided it is the Town’s intent to maintain such designation.

3. There would be significant staff resources expended without reimbursement if Town Council chose to initiate and process a zoning map amendment application for Ms. DiPalma-Kipfer's property.
4. There would be significant staff time required to research and analyze past zoning map amendments, to determine whether precedence exists for the Town to initiate and process a zoning map amendment benefitting a single privately owned parcel.
5. There would be significant public expense to extend water and sewer lines to the property of Ms. DiPalma-Kipfer.

DRAFT MOTIONS*:

1. "I move that Town Council direct staff to prepare a Resolution confirming Town Council's approval of CPA11-01 on June 14, 2011, which designated Ms. DiPalma-Kipfer's property as "Mixed Commercial" on the Town's Planned Land Use Map, and further move that such Resolution be placed on the Town Council's February 14th meeting agenda for action."
2. "I move that Town Council request that the Planning Commission consider maintaining in the updated Comprehensive Plan a planned land use designation of "Mixed Commercial" on the property of Ms. DiPalma-Kipfer, or an equivalent category of planned land use. I further move that this request be delivered to the Planning Commission on behalf of Town Council by staff member Daniel Galindo."
3. "I move that Town Council direct Staff to gather and study past zoning map amendments, to determine whether there is a history of Town-initiated and processed zoning map amendments that benefit only a single private property owner, and, if so, under what circumstances. Staff is asked to include in its study past zoning map amendments for the Chapman property on Hirst Road, and the Browning property on 9th Street and Main. I further move that Staff report its findings at the Town Council meeting on March 14, 2017."
4. "I move that Town Council begin the process to initiate a zoning map amendment on property owned by Patricia DiPalma-Kipfer, located at 38038 Colonial Highway, that would rezone the property from "Transition X" to a district that allows for Commercial development as a matter of right. I further move that Town Council

direct Staff to prepare a Resolution initiating such an amendment, and to place such Resolution on the Town Council agenda for action at the February 14, 2017 meeting.”

5. “I move that Town Council direct Staff to provide further information to the Town Council on the history and process of annexed properties being connected to the Town’s water and sewer system, to include the party obligated to pay for such costs, and to report such estimate to Town Council at its meeting on March 14, 2017.”

*NOTE: Absent an affirmative vote by Town Council to move forward as set forth in the motions above, no action will be taken by Staff on this matter unless an application is filed by Ms. DiPalma-Kipfer under the normal zoning map amendment process.

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